City of Lafayette
Special City Council Meeting
Planning Commission Special Meeting
MINUTES

Lafayette Community Center – Manzanita Room **October 9, 2008**
500 St. Mary's Road, Lafayette, California **6:30 p.m.**

1. CALL TO ORDER

Mayor Anderson called the meeting to order at 6:30 p.m.

2. ROLL CALL

Present: Council Members: Mayor Anderson, Vice Mayor Tatzin, Councilmembers Andersson, Anduri and Federighi

Planning Commissioners: Mark Mitchell, Chair, Will Lovitt, Vice Chair, Jeanne Ateljevich, Thomas Chastain, and Dick Holt

Absent: Commissioners Patricia Curtin-Tinley and Rick Humann

Staff: Steven Falk, City Manager; Ann Merideth, Community Development Director; Niroop Srivatsa, Planning and Building Services Manager; Greg Wolff, Senior Planner; Lindy Coburn; Associate Planner; Christine Sinnette, Senior Planner; Mala Subramanian, City Attorney; Joanne Robbins, City Clerk

3. PLEDGE OF ALLEGIANCE – led by Mayor Anderson.

4. ADOPTION OF AGENDA

ACTION: It was M/S/C (Federighi/Andersson) to adopt the agenda. Vote: 5-0-0 (Ayes: Anderson, Tatzin, Andersson, Anduri, Federighi; Noes: None; Absent: None).

5. PUBLIC COMMENTS - None

6. OLD BUSINESS

A. **Eastern Deer Hill Road General Plan and Zoning Amendments GP03-04, CITY OF LAFAYETTE (APPLICANT): Amendment to General Plan Map I-1 to reclassify three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from Administrative/ Professional/Office/Multifamily Residential to Rural Residential Single Family and/or Low Density Single Family.** The Planning Commission may also consider an amendment to General Plan Map I-1 to reclassify four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from Low Density Single Family Residential to Rural Residential Single Family.

RZ02-04, CITY OF LAFAYETTE (APPLICANT): **Change of zoning designation for three properties (APN 232-140-014, 232-150-027, and 232-150-028) located on Deer Hill and Pleasant Hill roads from APO to L-R-10 and/or R-20.** The Planning Commission may

also consider rezoning four properties (APN 232-140-004, 232-140-010, 232-140-016, and 232-150-021) located on Deer Hill and Pleasant Hill roads from R-20 to L-R-10. **Recommendation:** Discuss and direct.

Christine Sinnette referred to Attachment 1, an exhibit of the seven properties in the Eastern Deer Hill Road, said that staff has been working on the General Plan and Zoning Amendments for the properties since 2004, with the focus being on the three properties zoned APO. In addition to the three, the Planning Commission has been looking at the other four properties that front on Deer Hill Road. Included in the staff report is a chronology of the process to date, staff reports and meeting minutes.

Over the last few years, the Planning Commission has directed various studies and conducted numerous public hearings, with the goal to provide a final project description specifically identifying which properties were to be included in the amendment and what the proposed General Plan and zoning designations should be.

At the last Planning Commission meeting, the process was stalled; the Commission was only able to come to agreement on two of the seven properties; Parcel 4 – a ½ acre parcel zoned R20 and the Commission decided to leave the parcel alone. The second parcel is Parcel 21; Deer Hill Ranch – it has split zoning R20 and LR-10 and the Commission decided to recommend the entire property be rezoned to LR-10. The General Plan and zoning amendments for the other five parcels remain unresolved. The Commission went back and forth on a number of recommendations on zoning without a prevailing vote on any of the other parcels.

The purpose of the meeting is for staff to provide the Council with the update and to provide the Planning Commission with a chance to voice their opinions on the properties.

Vice Mayor Tatzin referred to Parcel 4 and questioned what would happen if the owner agreed with the adjacent property owner to do a lot line adjustment, and he also questioned what zoning would be considered. Ms. Sinnette said the process would need to be reviewed by the Planning Commission, assuming Parcel 16 has houses on it. If left R20 and the other parcel was LR-10, then potentially, they could ask for an increase in Parcel 4 up to the point that Parcel 16 did not become non-conforming. Vice Mayor Tatzin questioned if this was done, would all of the new area of Parcel 4 still be R20, and Ms. Sinnette said she would have to question the City Attorney.

Vice Mayor Tatzin said if the City zoned Parcel 4 as LR-10, he confirmed the City would still have to allow one house. He questioned if it would simply be clearer to zone it LR-10 because we are not deleting the opportunity to develop a unit, but eliminating ambiguities and recognizing limitations, and he further questioned if the Planning Commission considered this issue.

Commissioner Ateljevich said the rationale behind leaving Parcel 4 as is, is that it became a non-conforming lot if it was changed, but she would support an LR-10 for the parcel. Commissioner Mitchell said it was also discussed that if the Commission were to lump many of the parcels under the same zoning, it would look less like spot zoning, so this was another argument.

Councilmember Andersson referred to the minutes from the last Planning Commission meeting and said one issue that came up was, what properties could be included in the project. Ms. Sinnette said when the Council gave direction to staff in 2003, it was generally agreed by the Council that the Planning Commission and staff should look at all seven parcels with specific direction that the three APO parcels should be residentially zoned. When staff first presented this to the Planning Commission in 2004, this is how it was presented—in the project description, the APO properties

would have a General Plan designation of Rural Residential and then the Planning Commission may consider the other four properties. She noted that even though the APO properties are within the hillside overlay district currently, they are not subject to hillside regulations because they are not zoned residential.

Regarding zoning, Ms. Sinnette said there is a section in the zoning ordinance that talks about lots divided by the District. The act of doing a lot line revision in and of itself would not change the zoning. The ordinance states that when any zoning district boundaries divide the parcel or lot, the regulations of the least restrictive district shall extend for 30 feet into the more restrictive district. So, the zoning would not necessarily change, staff would see where the lot line is being proposed and then the R-20 would actually encroach into the LR-10.

Mayor Anderson said he and Chair Mitchell discussed the issue in the past and he believes it would be best to attack the more difficult question of Parcels 14, 27 and 28 first. Based on previous notes and minutes, it seems there is some direction on Parcels 10 and 16 toward residential zoning.

Mayor Anderson opened the public hearing.

Public Comments:

ALLAN MOORE, land use attorney representing the Dettmer family, said the family owns four of the seven parcels which constitutes 80% of the study area, said the staff report contains an accurate chronology of activities; however, a previous staff report contained an earlier chronology going back to the General Plan, which is more important. The General Plan was adopted in 2002 and it is that plan they utilize in the authorization. He said this is a city-initiated General Plan Amendment and not one initiated by the property owner. Therefore, the property owner opposes the General Plan Amendment and rezoning and does not propose any activity on the site and would like to leave the site as is, prefers to keep the designations as is, unless a specific plan is proposed to plan for the area. He said the General Plan states for the Eastern Deer Hill Road area; "This area deserves a careful and detailed analysis. It is therefore recommended that a specific plan be prepared for this area immediately following adoption of the General Plan." He said a directive is then given; "Program LU-13.2.22, page I-23 of the General Plan", which states, "Prepare through a community planning process an Eastern Deer Hill Road Specific Plan that includes the following requirements..." He noted there are 4 requirements that mirror a lot of state laws for specific plans. It is authorized under state law and it takes a property and shows where clustering can occur, it shows alternatives to development, it has generally an EIR attached which discusses environmental constraints, and allows a regional approach to an area to see where access can go, to determine visibility impacts, how to cluster property and dedicate certain areas that should not be developed. Therefore, it is his legal view that the City's General Plan would require a specific plan be adopted as part of this process, and they indicated this back in 2004 when he was previously involved. He said they also reviewed the constraints analysis which combines all setbacks and requirements, which concludes there is very little land within the area that is developable. It is not prepared by a planning company, but an environmental consultant. He believes the analysis is a good start and one of several documents that would normally be prepared as part of a specific plan. However, he asked the Council and Planning Commission and staff to read the General Plan because what it directs the City to do is a complete Specific Plan. He said the minutes confirm this as well as the goal setting session of 2004 which identifies that the Council decided not to include preparation of the Deer Hill Road Specific Plan as a goal due to budget constraints and other significant projects taking staff time. He respectfully requested the City to consider not doing any kind of rezoning now until such time a specific plan can be authorized. Alternatively, if the City feels they need to do something now even though there are no applications on file, he asked that they be allowed to work

with staff toward an approach that is fairer to the property owner. He said the original charge showed the difference in general plan density that occurs with a proposed down zone, i.e., Parcels 10 and 16 would allow about 46 homes. As down zoned, they would allow a maximum of 4 homes, which could also be further reduced, which is a significant reduction which should be considered only after the area is planned through a specific plan process.

Councilmember Andersson said the general plan language called for standards in four different areas, and he questioned what those were. Mr. Allen said the four areas addressed: a) protect and enhance the rural character of the area north of Deer Hill Road where not adjacent to Pleasant Hill Road; b) preserve prominent views; c) include development standards that maintain the semi-rural character of the area of the community; and d) utilize the property south of Deer Hill Road to help communicate the image of Lafayette as a semi-rural community. He said his position is that if this guidance is accepted, the Council must accept also the policy of doing a specific plan.

Commissioner Ateljevich confirmed Mr. Moore did not apply the hillside slope ordinance in calculating the density under the present zoning, Mr. Moore noted that he did not calculate the density; he took it from a staff report, which he confirmed also did not include the hillside slope ordinance. He said this was his point—if it is down zoned from the maximum 46 units to 4 units, they may not get the 4 units under the hillside ordinance in place now, and it could be further reduced down to 1-3 units.

Councilmember Federighi confirmed that the Council was initially discussing Parcels 27 and 28 of the four Dettmer parcels, and Mr. Moore said all four are in play for a proposed GPA, although 27 and 28 are the primary eastern most parcels being considered tonight. He clarified with Mayor Anderson that the Dettmer family owns Parcels 10, 16, 27 and 28.

GUY ATWOOD said the General Plan Advisory Committee originally recommended that all seven parcels be LR, which was after studying the General Plan for 9 years. Subsequent to that date, the City Council made a change in the General Plan to reflect the concept of the possibility for a specific plan on these parcels. He noted that while almost unanimous, he voted for Lot 10 to allow for a lot split with support for the flatter portion being something other than LR. Secondly, he said Table 3 does not reflect all constraints on the map. The units that could possibly be done on the slope density might not all be possible when all constraints are considered. He also reminded the City Council that the previous owner of Parcel 21; Hunter Holding, specifically said they favor the LR zoning for their property but that they wanted their property zoned the same way as the adjacent property—that they should not be given less of a right than adjacent property owners. He noted Mr. Holding sold the property, but he owned it for many years. Also, the Spring Hill Valley Homeowners Association, the Pleasant Hill Valley Homeowners Association and the Lafayette Homeowners Council have all voted to support the recommendation for LR for the seven parcels. Finally, he said one of the real concerns in addition to issues raised in the constraints analysis is that the intersection of Pleasant Hill and Deer Hill Road is the busiest intersection in the City of Lafayette. There is little possibility of doing anything with the road such as traffic calming, and as it goes to the west, it is a main route for northbound traffic to BART and it is not a flat road.

Councilmember Federighi questioned if Mr. Atwood was taking the position that Parcel 28 should also be LR, and Mr. Atwood said they were not trying to create a situation where they were down zoning properties. They were trying to come up with best solutions for various parcels. He said everyone realized that Parcel 28 is a long, narrow lot with very few things that could be done with it. He wanted to provide flexibility in which to do something with that parcel, and his personal feeling would be that it be used for parking.

MIKE KIM, said he purchased Parcel 21 from Mr. Holding with the hopes of retaining Deer Hill Ranch and also to start his wife's home schooling co-op business. They tried working hard to maintain the ranch business, but they encountered financial challenges similar to the Holdings including the non-profit's inability to obtain insurance. He said some of the animals have stayed on the ranch, they are in the process of getting some horses and are starting again slowly. He said he is aware of down zoning and while they do not have any intent of developing the property, they purchased the property with the inherent value as reflected in the current zoning. And, there may come a time where they must sell the property and questioned the rationale for reducing a density pattern that is already quite sparse.

Mayor Anderson closed the public hearing.

Councilmember Andersson said in a letter from February and another letter before the Council tonight, there is indication that there would not be enough of a potential housing opportunity to meet the ABAG requirements, and he asked for an explanation of this. Ms. Srivatsa said the current Housing Element did an inventory of potential sites, and these Deer Hill properties were not part of that inventory. Staff was able to show the State the City had sufficient land to accommodate its regional housing allocations. She said Diana Elrod, the City's housing consultant is present, she and staff will be working with the Downtown Strategy consultants, and she is confident in finding sufficient downtown housing opportunities, and also noted she will be responding to the Housing Rights, Inc. letter.

Mayor Anderson questioned if there is a requirement in requiring a specific plan as opposed to a straight General Plan amendment, and City Attorney Subramanian said the City does have the option to do a General Plan amendment as opposed to a specific plan. She said it does propose a specific plan in the General Plan document, but the General Plan also specifies that the programs listed in the plan are not exclusive by their said actions that the City should take to implement a goal and policy. So, it is not a mandatory requirement that the City do a specific plan.

Vice Mayor Tatzin said it is useful to have the two reports on the same agenda. In the inclusionary housing discussion, there is a section called Materials Prepared for the June 23, 2008 Joint Meeting, which was not held, and a map is entitled Multiple Family Residential possibilities outside the Redevelopment Area and in the background of the page there is a table which gives residential build-out potential of undeveloped land. So, in the map, his conclusion is that Parcel 27 is included in the map. In Table 23, it talks about MRO, APO and MRP uses and includes parcels shown on the map outside the Redevelopment area. The total number of units allowed is 551 on the table and currently, the new housing requirement is 361, and he was not sure the uses of MRO, APO and MRP come from Parcel 27, but in total, it is 140. As part of the General Plan Advisory committee, he supported making this plan LR for a variety of reasons, but he wants to make sure the City is not getting itself into an unanticipated problem visa vi, housing element law. Ms. Srivatsa said the she and Ms Elrod had conducted the site inventory today, and it will take some time to generate the final numbers. She said when the last inventory was done, they estimated that the downtown had a potential of around 500 units. One of the parcels cited was incorrect which reduced the capacity to 460 units within the downtown. She said she was not sure what the planned inventory will generate, but staff can now factor 46 units from Eden Housing, 20 units from Lafayette Park Terrace, and 65 from Woodbury. Development applications that were not considered in the previous inventory can now be included but at this time, staff has not confirmed the City can accommodate the 361 units within the downtown.

Mayor Anderson asked the Council to focus on the APO parcels with the hope to get direction on how to proceed. He is inclined to think that the original concept of LR designations had some

relevance and as a member of the General Plan Advisory Committee, not only is there a potential traffic impact but given the visibility of the area as a gateway to the City, the City did not want to change the character of the area.

Councilmember Anduri asked for an explanation of why the Council asked the Planning Commission look at the rezoning as opposed to asking for a specific plan. Councilmember Federighi said the Council strongly considered a specific plan and initially directed staff to obtain estimates for cost, which was approximately $130,000 at the time, which was not something the Council felt it could justify. She said the Council also agreed that they wanted the area to be residential as opposed to commercial and did not believe there was consensus that it only be single-family residential.

Chair Mitchell said the Commission reviewed the property for 5 years or so, originally at the request of the City Council. The opportunities and constraints analysis cost about $40,000 and they also looked at this for some time. The slope analysis was an additional ±$3,000, so a lot of time and money has been spent studying the property. He said the General Plan was looking for four items from the specific plan, they all referred to maintaining the semi-rural nature of the area and while there is no formal document, he believes that the Commission looked at this. The one touched on the most was the development standards as a way to reflect the area as semi-rural, and he feels the Commission has spent a lot of time and is anxious to move this along.

Councilmember Andersson said he read through several times the minutes of the 23rd, said there were obvious issues which he felt included: Commissioners Ateljevich and Lovitt were looking for less density, Commissioners Curtain and Holt were looking for more density, and Commissioner Humann said it was not enough information to make a determination. He asked Commissioners to provide a sense of where the divide came and which issues needed to be resolved in order to get a Commission recommendation.

Chair Mitchell said he was hoping to save Parcels 27 and 28 to the end because the Commission was able to develop some sort of consensus on the other parcels, which was centered on the direction for residential zoning. If residential, then the slope/density calculations kicked in, and most are limited to one dwelling unit. So, they were coming closer to developing a consensus for all parcels other than 27 and 28. With regard to Parcels 27 and 28, the Commission looked at MRO, MRP, MRT, and Commissioner Ateljevich stressed they looked at a lot of different possibilities all keeping within single family residential zoning.

Commissioner Holt said he has always wanted a specific plan, he is more uneasy about making a decision on this and less on the density. To him, the parcels are extremely important and he thinks then as he does now, that they need to be studied in a specific plan.

Vice Chair Lovitt agreed with Commissioner Holt's comments with what the Commission was wrestling with; different solutions but the same problem. He said in relaying his arguments at that time, it goes back to the overall General Plan Amendment and what that would take. His feeling was that they would not do a specific plan right now and absent that, he would prefer to see the City retain sufficient control, make sure all properties are subject to the hillside ordinance by making them single family residential, and that was the overwhelming impetus behind his argument. This said, anytime in the process, anyone could come in with an application and the Commission may or may not approve something regardless of whether zoning changes get made. He said the big issues for him were the City being able to maintain control and the visible importance of the properties as the eastern gateway to town.

Commissioner Chastain said he missed that meeting, said at the time he agreed that Parcels 27 and 28 have always been the issue. He took the view that the MRT zoning would be an interesting proposition in a split zoning situation on Parcels 27 and 28. He felt a little uneasy that there wasn't a specific plan, thinks it is a very visible piece of property in terms of the City. The idea of development is more than just zoning; it is how it is able to cultivate what goes on there and maintaining other agendas and desires. But he thought in lieu of that, this would be a way of understanding also some rights to develop that property which seemed reasonable. So, he supported the staff recommendation at the time, which was to find a way to allow split zoning on Parcels 27 and 28 to allow an MRT zoning, which he thought could be developed well, and which would allow more housing, which he thinks is possible. He does not believe a specific plan is going to happen, but the issue everyone is grappling with is how to maintain control so that development can be done in a way which is positive and retains the attributes to that landscape that the City wants.

Commissioner Ateljevich said she believes splitting the larger Parcel 27 at the corner of Pleasant Hill Road into MRT or something, but as she looked at it more and more, given the constraints of the site and especially Parcel 28, which has an unstable and steep hill behind it, no matter what single family zoning is put on it, it will be a one-home maximum. She would hope that if the City does zone it single family, that we could think of some way of transferring the density from one property onto one of the other properties that are in the same ownership, which she felt was doable. She does not believe the strip of an access coming from the north makes Parcel 28 suitable for anything, and Parcel 27 has the same access situation with a steep hillside. With those constraints, she would accept something like an LR-5 on the larger parcel which would allow a little more density and if the developer wants to come in with a specific plan, there's no reason why one cannot be developed through sponsorship, and she believed a specific plan would enable a thorough review. She would favor a single family designation partly as a holding pattern on the corner.

Chair Mitchell said Parcel 21 was one of the few properties the Commission was able to develop a consensus on for LR-10 because in looking at the site constraints, the R-20 portion of the parcel is in Class I or Class II ridges.

Mayor Anderson referred to the specific plan process proceeding at the developer's interest, he questioned if the City could move forward with the General Plan Amendment and rezoning and then wait for the property owners to come in with a specific plan, and Ms. Srivatsa said this would further restrict the property owner's ability to propose a higher density, as there may be some public assumptions made that this is going to be a lower density area. One suggestion was that if the City and developer were interested, a development agreement could be entered into, and then the developer could come up with a project that would be vetted before the public.

Commissioner Holt said he is a proponent for a specific plan for the whole area and the problem with what is being proposed is piecemeal and would be viewed as restrictive and it would not be all encompassing. There are issues to the properties that the City might not even be aware of now, but the site is important, it's semi-rural aspect of it needs to be folded into the City's General Plan, and there are some important multi-residential uses that the City may not even be aware of yet and he would recommend not doing anything until the City has to.

Mayor Anderson said the City does not have to do anything, but the idea of this being LR came out of the General Plan Advisory Committee early on and this was carried through the Council as a potential for a specific plan. So, it sort of changed its character as it became processed. But the consistency he is hearing is that there is a great deal of interest in ensuring what happens is

consistent with the look and feel of the City from arriving through the gateway. He does not see how this is inconsistent with our saying, let's lay some constraints on this area. No one is ready to do anything, but the Council can begin to direct the process now; to make the move to downzone the properties and begin to put constraints on that relate to the hillside and the ridgeline ordinances. So, he would not see this as being inconsistent with past actions.

Councilmember Anduri questioned if the City can enter into an agreement with the land owner of Parcels 27 and 28 that would require a private specific plan process prior to developing the property any further. Ms. Subramanian said the City could do this through a development agreement, but it would need to be a mutual agreement. Councilmember Anduri said he could see making Parcels 4, 10, 14, 16 and 21 LR-10 and then entering into an agreement with the owner of Parcels 27 and 28. He believed Commissioner Ateljevich's idea for Parcel 28 was great—to keep it undeveloped and something that adds to the attractiveness to the corridor while giving more developable rights to Parcel 27.

Councilmember Federighi said she would favor the latter because she believes Parcel 27 and 28 are different from the other properties. She liked Commissioner Ateljevich's idea of LR-5 for part, and she is not ready to completely abandon the idea of MRT for the property east of the creek. She realizes this is a gateway and visible from parts of the City, and she would prefer the second alternative rather than to suggest LR zoning which places a considerable challenge onto the developer.

Vice Mayor Tatzin said he was still hung up on the number of housing units the City has space for, he was not sure to what extent the downtown specific planning process is going to change in available units, and if you change the zoning in the General Plan, particularly for Parcel 27, it would be hard to unwind. He said in the Housing Rights letter, it talks about changing California law to acquire housing by right and he questioned how this worked, and Ms. Srivatsa said currently all housing within the commercial district requires a land use permit, and the Council will most likely see a recommendation from staff that this be changed for the new Housing Element. Vice Mayor Tatzin felt then there would be a condition of precedent to change the zoning on this.

He said with regard to the property owner's assertion that one could do development on the upper level of Parcel 27 that was not visible, the property owners had a number of decades to show the Council a development that would have these characteristics. For one reason or another they have chosen never to bring forward such a proposal. He remembers various times when there were things like garbage trucks parked up there that could be seen quite clearly from a distance from Highway 24. So, he does not think he has seen near enough information to support the developer's assumption about how they could develop the properties so that they would be invisible. Also considering there have been no sketches of what an MRT type development might look like along the Pleasant Hill Road or Deer Hill portion of Parcel 27, he is not convinced by letters he has seen. He said he does like Commissioner Ateljevich's idea of transferring the density from Parcel 28 to Parcel 27, so he would support moving forward with Parcels to the north and west of Deer Hill Road and wait to get more information on the housing element issues prior to taking up Parcels 27 or 28.

Mayor Anderson said if the Council finds it could use more capacity for housing on Parcel 27, he questioned whether this was where the City would want to put it. He felt a split zoning would be a little better because it would set aside that which is most visible and put that in single-family and then the City has then opened the opportunity for some real study and proposal on the lower portion that may or may not work. And he felt at least the main body of the area would be protected.

Chair Mitchell said even if the parcel were to go to MRT, the City would probably only pick up another 4-5 units. Councilmember Anduri said his only concern in splitting it would be that we should keep it all the same, there is more of an ability to drive the development down to the lower area as opposed to developable areas at the top, and he did not see how the upper portion could sustain any development.

Councilmember Andersson said he liked Commissioner Chastain's comment that something could be done to maintain some controls, particularly on Parcels 27 and 28. One may be a rezoning or some sort of agreement before development takes place for a more defined study of what should occur. This may result in necessary time to better understand what the housing numbers impact might be. City Attorney Subramanian noted that it was her understanding from Mr. Moore that they may be interested in pursuing a development agreement with a specific plan approach. Councilmember Federighi believed this could also assist in some of the circulation problems.

City Attorney Subramanian said typically, the Planning Commission would make a recommendation to the City Council for consideration.

ACTION: It was M/S (Ateljevich/Chastain) to recommend that the City Council initiate a change of zoning on Lot 4, 10, 14, 16, and 21 from APO to LR-10 and direct staff to work with the owners of Lots 27 and 28 on the terms of a development agreement; unanimously approved.

Commissioner Chastain questioned what would happen if Caltrans sold their parcel to a developer, and he questioned if Parcel 14 should also be included with Parcels 27 and 28. Ms. Sinnette suggested including it in the LR-10. Practically, if the setbacks of 50 feet are applied in LR-10, there is a 1200 square foot building footprint. If someone were just to read the General Plan designation for the property in the early table showing strictly mathematics, it could show 47 units, and there would be no way to get that amount with a 50% slope. However, someone might believe they could achieve 5-10 units and she did not believe the City even wants to see that. She said staff would therefore recommend including Parcel 14 with the other four LR-10 designations.

Mayor Anderson questioned the timeline for the process, and asked to put something in place to tighten the timeframe to update the Council. Vice Mayor Tatzin suggested a motion.

ACTION: It was M/S/C (Tatzin/Federighi) to accept the Planning Commission recommendation to initiate a change of zoning on lots 4, 10, 14, 16, and 21 from APO to LR-10 and direct staff to work with the owners of Lots 27 and 28 on the terms of a development agreement and return to Council in 3 months with a status report. Vote: 5-0-0 (Ayes: Anderson, Tatzin, Andersson, Anduri, Federighi; Noes: None; Absent: None).

Ms. Sinnette confirmed that staff would retire the current application numbers and review the five properties in a new application to rezone them to LR-10 and then return to the Council with additional suggestions with Parcels 27 and 28.

EXCUSED
Chair Mitchell was excused from the meeting at 8:30 p.m.

BREAK
Mayor Anderson called for a brief break at 8:30 p.m. and reconvened the special meeting at 8:40 p.m.

B. Discussion on an Inclusionary Housing Ordinance and key components, economic update, questions and comments from the stakeholders, and items to include in the draft ordinance

Recommendation: Approve the key components of the inclusionary program for Lafayette; direct staff to prepare an ordinance.

Lindy Coburn gave the staff report, indicating that the last time the Commission discussed the inclusionary program was at its May 12th Joint Meeting, during which time a number of questions were raised and additional information was requested. The second Joint Meeting was scheduled for June 23rd, however it was postponed to allow sufficient time to discuss the matter. This evening's packet is the same as that prepared for the June 23rd meeting.

She indicated that California Redevelopment (RDA) Law establishes requirements for affordable units within the Redevelopment Project Area, including 15% to be set aside as below market rate units, 6% of which must be affordable to very low and 9% as affordable to low income households. The terms for affordability, or how long the below market rate pricing should last, is also governed by RDA law at 55 years for multifamily rentals and 45 years for multifamily for sale. However, the City has discretion on the development size trigger, how to establish the in-lieu fee (amount), and when the City should allow an in-lieu fee to be paid.
The larger discussion is outside the Redevelopment area, as this area is not governed by Redevelopment law. Most cities apply similar standards with RDA laws or with other communities inclusionary programs to simplify the regulations and implementation.

The question is what return of below market rate unit should be required, what size should it be triggered in the Redevelopment area, what should the level of affordability be, which of the MSB amounts be and when should they be allowed. The goal of the meeting is to obtain feedback on the structure and elements of the inclusionary housing ordinance. She said Diana Elrod and Kate Funk from Keyser Marston Associates are present who will lead the Council and Commission through the presentation.

DIANA ELROD referred to a summary of questions discussed which staff would like feedback on, and said she would project questions from the PowerPoint presentation and review them. She also referred to Item #4; Inclusionary Percentage Requirements on the Key Components, stating anything in *Italics* represents those being recommended by staff and needing feedback from the Council and Commission on. If not identified in *Italics* it is typically either in RDA areas and law cannot be changed, or it is something outside the RDA and an earlier recommendation.

For the inclusionary percentage requirement and what percentage of the units should be made affordable within the RDA, it is required to be 15%. Outside the RDA and everywhere else, staff is recommending 10%.

Vice Mayor Tatzin questioned the numbers of units inside the RDA, and Ms. Elrod said in the RDA, 85% of 100 units would be market rate and 15% would be affordable. Outside the RDA, 90% of 100 units would be market and 10% affordable.

Councilmember Andersson questioned the rationale for having different percentages outside the RDA, and Ms. Elrod said she believes many jurisdictions like Lafayette would begin with a lower percentage to gauge how well the program works. She said there has been concerns of other jurisdictions who felt 15% was too much and required too much of the developer giving up their profits. From her experience, 10% has been more accepted by the development community.

Public Comments:

MARY GELDIN questioned if the Council negotiate with the developer between 10 and 15% of the requirement outside of the RDA.

Mayor Anderson said the proposal is 3-9 units at 10% and there would be an ability to negotiate.

Ms. Elrod said the recommendation by staff is that anything more than 7 units be required to be on or off site and for developments of between 3-6 units, the in-lieu fee would be allowed for partial units thereby created. At 15% in a 7 unit development, this is one unit, so anything below that would be a fractional unit.

Vice Mayor Tatzin said in the past, certain property owners use the approach of developing a portion of parcels, then have it not a part, they come back later and try to subdivide that part of a continuum. So, to start with the parcel, you may get 3 units and then by the time you are done, you have 20. He would like to do a cumulative count. He said this is more likely to occur outside the RDA. The other question he had was that he thought that if within the RDA, fractional units would round up, which is not reflected in the proposal, and is not consistent with the City's current policy.

Councilmember Federighi voiced concern with rounding up from the requirement of 3.01 to 4; that if they are 3.5 they should be rounded up to 4. Ms. Elrod said they can also address this and come back with a proposal as to whether or not staff would recommend rounding up or down for fractional units. She noted there is a certain amount of flexibility where the Council can negotiate this with the developer.

Ms. Elrod referred to the right side of the presentation, or the area outside the RDA, anything greater than 10 units are required to produce on or off site, or a customized analysis would be developed. Keyser Martson made a recommendation on how to take each large development outside of the RDA and customize what the City is going to require for that individual project. For between 3-9 units, the in-lieu fee would be allowed for partial units. She said they discussed at the last meeting where they did talk about in-lieu fees and the issue of tying units based on square footage size, and if there is a large development, you might be able to accept greater fees for that by looking at the product or customization.

Vice Mayor Tatzin questioned what percentage of the City's applications would satisfy the 3-9 unit range versus the 10-40 unit range, and Ms. Coburn said she believed the vast majority were within the 3-9 unit range.

Public Comments:

GUY ATWOOD questioned how many potential units are there outside the RDA area that would be available.

Ms. Coburn said based on research from the General Plan, there are approximately 550 units available within the RDA. The Council discussed areas inside and outside the RDA, and Vice Mayor Tatzin noted the map refers to different areas than the table does. Ms. Coburn referred to Table 6 of the General Plan build-out outside of the RDA shows the ability to build an additional 1,026 units, at which 500 units would be used as affordable units. Ms. Srivatsa noted that 500 of the 1,026 units would be spread out to outside of the RDA, therefore, the answer to Mr. Atwood's question is ±500 units.

Mr. Atwood said what he is trying to get at is why even review something outside the RDA and felt time was being wasted.

KATE FUNK, Keyser Marston Associates, said it was their recommendation that over 10 units be subject to negotiations, to have something in the City's ordinance that allows the City to go after an affordable housing component on site, in-lieu fees, or otherwise, and have a fee for the small units and be done with it and not imagine every possible scenario in how the program would work.

Mayor Anderson said the map not tied to the table identifies several locations where there is the potential for multi-family units outside the RDA.

Ms. Elrod referred to item #5 Affordability Restrictions; what level of affordability should below market rate units be held to outside the RDA. She said within the RDA, according to RDA law, 15% of all housing units must be affordable. In terms of outside the RDA, staff is recommending different scenarios than were originally proposed. In terms of multi-family rental projects, there was an original proposal that cycled through restrictions with the first unit required to be affordable would be very low, the second would be affordable to low income and the third would be market. Based on the recommendations from staff and Keyser Marston's analysis, it would be very difficult to manage a program like this, and it was recommended that instead, that the City go with an income category for each housing type which she discussed. Outside the RDA, for multi-family rentals, low income households tend to get a short end of the stick when it comes to affordable housing subsidy, so greater points are awarded when providing housing for very low income households and not as much subsidy for low income households. Secondly, she said moderate income was not included. In this area, moderate level income households are typically able to afford market rate or close to market rate rental houses. Therefore, the low income category was chosen because it was the in-between category.

Councilmember Federighi thought the latter recommendation was not to impose any kind of inclusionary requirement on rentals because they could have a moratorium on them. Ms. Elrod said they were recommending having a program that would include rentals, but then enact a moratorium right now because there are really no rental housing units at this time. The idea was to establish the rental program and then suspend it until conditions change.

Councilmember Federighi questioned if the City would then have a very low income project that would be developed similarly to what is being done for seniors. Ms. Elrod said no, an affordable housing developer may include a mix of low and very low, or moderate in some cases, but in terms of the preponderance of units in a development that are subsidized, there are going to be more of the very low income. She believes this is a small category and it is easier to monitor than to have a mix of units, incomes are a little higher are they are not as onerous, but it is a recommendation.

Mr. Wolff clarified that the recommendation for a low income rental is for 10% of units that are required to be affordable, not very low or moderate, outside the RDA only.

Vice Mayor Tatzin said he understands what the law is for RDA, but asked if the City could be stricter than what the law requires. For example, the City's current regional housing allocation numbers probably have a higher percentage of very low units we have to provide than RDA law. Mayor Anderson questioned how this would be structured, and Ms. Elrod said the City could essentially make its own inclusionary zoning within the RDA with the percentage changing.

Vice Mayor Tatzin said if the City did this, recognizing that outside the RDA it would take 10% as affordable in some way, could we take a fee on a mixed number of allocations. It would more look

at cost versus square footage, and Ms. Elrod said this would be very difficult to do; cost versus square footage is based on the gap between what a moderate income household can afford and what the market rate is. She said if this was something the Council recommends, they would need to research on how this can be done, but her feeling is that it would complicate things much more.

Mr. Wolff said staff could bring this back to the Council, but at the end, they are going to look at what the actual numbers are for the three categories and the likelihood is that they will most not go all the way up to what those levels require. The Council asked Ms. Elrod to further explore this issue.

Ms. Elrod referred to the Multi-Family for Sale Proposal outside the RDA and said one of the original proposals was to cycle through moderate income and low income for condominiums. The recommendation staff is making is for moderate only. The most important reason is that the affordability gap between the low income and market rate in the condo department is significant. It does not really make sense from a financial point of view to require a low income unit in a condo development. Research shows that a person who is buying a multi-family unit for sale is basically paying for the cost to build it. She said the market rate was at about $770,000; the moderate income household can typically afford around $340,000 or about half.

Ms. Elrod referred to the last category; Single Family for Sale outside the RDA and said this would be at moderate income only and any development outside the immediate downtown and in single family areas would be more likely to receiving in-lieu fees from the developer for between 3-9 or some negotiated agreement for larger developments.

BYRNE MATHISEN referred to an article in the San Francisco Chronicle regarding the issue on the cost of homeowner fees in condo units are rising significantly and it ends up that those costs start to exceed their payment on the mortgage. She said costs are being passed onto residents, which is a real problem and becoming more apparent.

GUY ATWOOD encouraged the Council to simplify the program as much as possible and encouraged to try and keep most of the affordable units within the RDA.

Ms. Elrod referred to Item #8 Terms of Affordability, stating this question is how long should the below market rate price last for the for sale and rental units. She said within the RDA, the law requires 55 years for single family rental and 45 years for multi-family for sale. Outside the RDA, staff recommends the same terms in order to make it easier to administer.

Mayor Anderson noted there was no longer a quorum of the Planning Commission and excused Commissioner Jeanne Ateljevich and Will Lovitt.

Councilmember Andersson said if a couple qualifies and purchases a unit, has it for 30 years, he confirmed it would get sold to another qualifying family and the contract would extend another 45 years at the point of sale.

Regarding Item #11, should the City allow exemptions, Ms. Elrod said yes; this decision was principally about the legality of a jurisdiction having an inclusionary ordinance requiring developers to provide some percentage of their development to be affordable. As long as there are exemptions, concessions and waivers that are allowed for various purposes and that are consistent.

Regarding Item #13; Can the City give priority for those who work in Lafayette, she said the answer is no; the City can recommend that it would be within the same market; to target only people who are currently working within Lafayette is not consistent with RDA law.

Regarding Item #19, can affordable units be available for first-time homebuyers, Ms. Elrod said the answer is yes. They are defined by many jurisdictions are those who have not owned property within the last three years. The City may want to expand this that first time homebuyers would comply with this standard and staff recommends not restricting occupancy for them, but rather give them priority.

Regarding Item #20; How does the City control the resale of affordable units for condos if there were any single family homes, the seller needs to receive an amount tied to the increase in median income and compensation for capital improvements, and the City would need to determine how this would exactly work in the ordinance. The City may want to add a provision to ensure that the seller will not take a loss on the sale which would result in a loss.

Vice Mayor Tatzin said many people are taking losses and he was willing to consider some level of loss. Ms. Funk discussed this as a matter of formula, and Ms. Elrod further explained that because the price of the unit is tied to a government-established median income level, owners should not be penalized if the government would reduce that amount. She said it might have happened one year and it did not decrease by much, but then it went back up three or four fold. So, this is something that is not tied to the market but a governmental constraint. Mayor Anderson questioned if there was any latitude by the City, and she said there was plenty of latitude outside the RDA.

Regarding Item #9; In-Lieu Fees, Ms. Elrod explained to the Council the different ways of imposing the in-lieu fee and what staff is proposing. In-lieu fees are established based essentially on the affordability gap between what some lower income households can afford and what market rate prices are. There are two or three different ways to assess this; in terms of per affordable unit owed, how much is the affordable unit. For market rate units, a fee assessed each market rate in different ways or per square foot area. She said staff is recommending the per square foot area calculated out and setting a fee at how much dollar figure there is to the affordability gap per square foot. Staff recommended $10-$15 per square foot for apartments; $15-$20 for condos, $30-$40 for single family detached and negotiating some deal on this for a very large development. She said these are less than the actual gap, which varies from year to year, however the amounts are pretty consistent with other jurisdictions on what they levied through their own analysis. Also, some jurisdictions, like San Francisco, requires the developer pay the gap or more, and this provides subsidies for future development.

She said one of the values of the per square foot amount levying the fees is that you capture large apartments or houses of 4,000 square feet, whereas if you treat it by unit, some larger developments will be paying less than smaller developments who will be more or less penalized.

Vice Mayor Tatzin said he was comfortable with the square footage basis, but he wondered about starting out with a fee that is less than the cost of the project. He would like to start out with a number where we assume that it is close to capturing the full cost.

Councilmember Federighi referred to Walnut Creek's numbers and she questioned if theirs applied just to apartments or to all levels. Ms. Funk responded that theirs applies to condos. Ms. Elrod noted the reference was contained in Ms. Funk's staff report, Exhibit 3, page 6, item 9 dated July 31, 2007. Mayor Anderson said what is interesting is that for the ranges for condo and single

family, he can see how the recommended range is tied, and Ms. Funk said this also all depends on the income levels assigned and types of housing.

Vice Mayor Tatzin questioned cost recovery inside and outside the RDA, and he felt it was easier to have a simpler philosophy for full recovery and then be able to use adjustment for specific situations. Ms. Elrod felt it would make sense to return with examples of what certain developments would look like.

Ms. Funk said the City can charge to recover its full costs, but one of the arguments developers often make for smaller projects is that they do not have the ability to do a larger project and it is tougher on their costs. In addition, they pay more for land per unit than other cities and with larger projects. Ms. Elrod said this item would be brought back for clearer directions.

Ms. Elrod ended discussion by saying she would bring back the inclusionary percentage requirement of 10% outside the RDA, and the development size threshold, about capturing sites that are instrumentally working to avoid requirements through piecemeal development, also regarding rounding up or down fractional units, and regarding affordability restrictions, she said staff will look at determining how to do income levels to bring about proportionate allocations, which will significantly change how they structure the program. It was suggested to use the percentage of very low, low and moderate income units required by RHNA for projects outside the RDA. For low income, the recommendation is to stay within 70% as opposed to 80%. The last item to return is Item #9; how in-lieu fees would work.

ACTION: It was M/S/C (Tatzin/Federighi) to direct staff to prepare a draft Inclusionary Housing Ordinance. Bring back additional information on #5 Affordability Restrictions and #9 In-Lieu Fees to the Council before scheduling the draft ordinance for public hearings before the Planning Commission and City Council. Vote: 5-0-0 (Ayes: Anderson, Tatzin, Andersson, Anduri, Federighi; Noes: None; Absent: None).

7. ADJOURNMENT

The Council adjourned at 9:35 p.m. to the next scheduled meeting on Tuesday, October 14, 2008.

APPROVED:

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Mike Anderson, Mayor

ATTEST:

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Joanne Robbins, City Clerk